

may include unforeseeable changes in market conditions), and must be supported in writing, with documentation showing why the extension is needed and that the need could not have been reasonably foreseen by the employer. The CO will notify the employer of the decision in writing. The CO will not grant an extension where the total work period under that *Application for Temporary Employment Certification* and the authorized extension would exceed 9 months for employers whose temporary need is seasonal, peakload, or intermittent, or 3 years for employers that have a one-time occurrence of temporary need, except in extraordinary circumstances. The employer may appeal a denial of a request for an extension by following the procedures in § 655.61. The H-2B employer's assurances and obligations under the temporary labor certification will continue to apply during the extended period of employment. The employer must immediately provide to its workers a copy of any approved extension.

[77 FR 10165, Feb. 21, 2012]

**§ 655.61 Administrative review.**

(a) *Request for review.* Where authorized in this subpart, employers may request an administrative review before the BALCA of a determination by the CO. In such cases, the request for review:

- (1) Must be sent to the BALCA, with a copy simultaneously sent to the CO who denied the application, within 10 business days from the date of determination;
- (2) Must clearly identify the particular determination for which review is sought;
- (3) Must set forth the particular grounds for the request;
- (4) Must include a copy of the CO's determination; and
- (5) May contain only legal argument and such evidence as was actually submitted to the CO before the date the CO's determination was issued.

(b) *Appeal file.* Upon the receipt of a request for review, the CO will, within 7 business days, assemble and submit the Appeal File using means to ensure same day or next day delivery, to the BALCA, the employer, and the Associate Solicitor for Employment and

Training Legal Services, Office of the Solicitor, U.S. Department of Labor.

(c) *Briefing schedule.* Within 7 business days of receipt of the Appeal File, the counsel for the CO may submit, using means to ensure same day or next day delivery, a brief in support of the CO's decision.

(d) *Assignment.* The Chief ALJ may designate a single member or a three member panel of the BALCA to consider a particular case.

(e) *Review.* The BALCA must review the CO's determination only on the basis of the Appeal File, the request for review, and any legal briefs submitted and must:

- (1) Affirm the CO's determination; or
- (2) Reverse or modify the CO's determination; or
- (3) Remand to the CO for further action.

(f) *Decision.* The BALCA should notify the employer, the CO, and counsel for the CO of its decision within 7 business days of the submission of the CO's brief or 10 business days after receipt of the Appeal File, whichever is later, using means to ensure same day or next day delivery.

[77 FR 10166, Feb. 21, 2012]

**§ 655.62 Withdrawal of an Application for Temporary Employment Certification.**

Employers may withdraw an *Application for Temporary Employment Certification* after it has been accepted and before it is adjudicated. The employer must request such withdrawal in writing.

[77 FR 10166, Feb. 21, 2012]

**§ 655.63 Public disclosure.**

The Department will maintain an electronic file accessible to the public with information on all employers applying for temporary nonagricultural labor certifications. The database will include such information as the number of workers requested, the date filed, the date decided, and the final disposition.

[77 FR 10166, Feb. 21, 2012]